

**This scheme commenced on 5 December 1996 and
ceased on 21 November 2000.
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THE SOLICITORS SCHEME

Professional Standards Act 1994 (NSW)

PREAMBLE

1.0 OCCUPATIONAL ASSOCIATION

The Solicitors Limitation of Liability Scheme is a scheme of The Law Society of New South Wales (The Law Society). The Law Society is the professional association of solicitors practising in New South Wales and its details are as follows:

The Law Society of New South Wales A.C.N 000 000 699

170 Phillip Street

SYDNEY NSW 2000

The Law Society is constituted as a company limited by guarantee. It is governed by a council of 21 members elected in accordance with its articles of association and who are representative of city, country and suburban solicitors. It has more than 13,000 members practising on their own account, or as employees in private practice, government service and corporate service. Approximately 10,000 members are private practitioners of whom more than 50% are employers.

Since 1935 The Law Society has also been vested with powers pursuant to statute to regulate the practice of solicitors in New South Wales. These powers are comprehensive and, as they currently exist, are set out in the Legal Profession Act 1987 (the LP Act). In particular, the Council of The Law Society is empowered by the LP Act to grant practising certificates to legal practitioners authorising them to practise as solicitors and to refuse to issue a practising certificate if the requirements specified by the LP Act are not met including, among others, failure to pay a required contribution or levy to the Solicitors Mutual Indemnity Fund (the profession's compulsory insurance fund).

1.1 RESPONSIBILITY FOR ADMINISTERING THE SCHEME:

Responsibility for the administration of the scheme and ensuring that it complies with the requirements of the Professional Standards Act 1994 (the PS Act) and of The Professional Standards Council will rest with the Council of The Law Society and senior officers of The Law Society.

1.2 RISK MANAGEMENT:

DETAILS OF RISK MANAGEMENT STRATEGY

In October 1994 Messrs Blake Dawson Waldron Legal Management Consultancy Services was appointed by the Board of LawCover Pty, Limited, (LawCover) a subsidiary of The Law Society, to design and develop its Risk Management Education Program. This follows the acceptance of certain recommendations contained in a Risk Management study completed for LawCover by Streeton Consulting Pty Limited and Minet Professional Services Limited.

The Streeton Report recommended that four Risk Management Education modules be designed and delivered ideally to all practitioners in New South Wales. The modules are titled:

1. engagement management;
2. managing the legal issues;
3. listening, asking and explaining;
4. quality assurance and risk management;

Each course is of 4 hours' duration.

LawCover and the consultants have been committed to widespread consultation with the profession, legal training institutions and other relevant individuals and organisations throughout the development phase of the program.

Two non-urban practitioners are acting as special advisers to the program. Their role is to ensure that the perspective and the needs of practitioners from small legal firms are taken into account both in terms of course content and delivery.

COURSE DESIGN AND DELIVERY - KEY FEATURES

Nature of Courses

All four courses will be extremely inter-active requiring a high level of participation by attendees. Courses are offered to small groups (maximum of 20 participants per course) throughout New South Wales.

Courses involve pre-course reading, participation in exercises and a detailed case study. In some courses video replay exercises will be used. A detailed manual for participants will be provided for each course.

Courses are offered as "stand alone" modules to allow participants to attend the modules in any order and with opportunities to attend in various configurations.

Incentives to Attend

The Board of LawCover has agreed that LawCover will provide full rebate, for the cost of each module satisfactorily completed by each principal, of their premium contributions over two-years following completion of the module.

Mere attendance at the course will not necessarily guarantee the granting of the premium rebate. Attendees will need to demonstrate active attendance and participation.

Delivery of Courses by Risk Management Educators

The Courses are delivered by Accredited Risk Management Educators who have been selected and have undergone training by BDW Legal Management Consultancy Services. The accredited educators have:

- demonstrated expertise as outstanding presenters of inter-active training courses for professions/senior executives;
- exhibited specialist knowledge of risk management, communications, practice management and quality assurance;
- demonstrated a willingness to undergo specialist training;
- demonstrated experience in the use of case studies in training;

While this is an initiative of LawCover, the Council of The Law Society strongly encourages attendance at the Risk Management Education Courses and the courses will be prepared in such a way as to ensure that they comply with The Law Society requirements for Continuing Legal Education Courses.

Other Risk Management Activities:

- Professional Conduct and Practice Rules.
- A range of Guides to Good Practice.
- Introduction of Client Care Guidelines.
- Practice Management Courses conducted under the auspices of The Law Society and provided to practitioners commencing practice as principals.
- College of Law (wholly owned by The Law Society) courses and Practical Legal Training Programs. The Universities of Newcastle, Western Sydney, Wollongong and Technology, Sydney are all conducting or intending to conduct practical legal training programs.
- Continuing Legal Education provided by the College of Law, the Young Lawyers section of The Law Society, The Universities of Sydney and New South Wales and a number of commercial providers. Solicitors are required to undergo continuing education on an annual basis to retain certification to practise.
- Training in quality management in legal practice provided by Quality in Law Inc which was instigated by The Law Society and financially assisted by the Law Foundation of New South Wales and LawCover.
- Trust account audits and advisory services.
- Schemes of Accreditation.
- Development of a basic set of communication 'protocols' for use at the time the

solicitor/client relationship is being formed. This has also been required as a result of amendments to the LP Act that affect engagement and delivery of information by solicitors.

- Client communication studies as part of the Continuing Legal Education programs available to solicitors.
- A field counselling service providing a confidential diagnostic and counselling service to insured solicitors who have been the subject of claims.
- Recording information in the LawCover database and files to obtain more reliable and, timely feedback on risk trends. This will also assist in understanding whether risk management initiatives are proving effective.
- Surveys to examine the practices and office procedures of firms to assist educational programs and field counsellors.
- Special publications.

All of the above (except university activities) are provided by The Law Society or its subsidiaries, LawCover and the College of Law or otherwise under its auspices.

1.3 COVERAGE:

Coverage under the scheme is limited to solicitors who have the requisite insurance cover and who wish to have their liability limited, so preserving the entitlement of firms to compete on the basis of unlimited liability if they should so choose.

THE SCHEME

2.0 THE OCCUPATIONAL ASSOCIATION:

The Solicitors Limitation of Liability Scheme is a scheme of The Law Society of New South Wales.

2.1 PERSONS TO WHOM THE SCHEME APPLIES:

The Scheme applies to:-

- 2.2.1 those persons determined by The Law Society as satisfying the criteria specified in clause 2.2 of this scheme.
- 2.2.2 those persons to whom the scheme applies by virtue of sections 18 and 19 of the PS Act; and
- 2.2.3 any person prescribed by the regulations for the purpose of section 29(4) of the PS Act.

2.2 CRITERIA FOR INCLUSION IN THE SCHEME:

The Law Society will consider the following criteria when making up the list of persons to whom the scheme applies:

- 2.2.1** The person must be a member of The Law Society and must renew that membership annually;
- 2.2.2** the person must hold a current practising certificate as a solicitor issued by The Law Society;
- 2.2.3** the person must have the benefit of insurance to an amount at least equal to the amount of the limitation of liability applying to that person at the relevant time which insurance complies with standards set from time to time by The Law Society in accordance with section 27 of the PS Act;
- 2.2.4** the person must certify annually that the firm of which they are a member holds sufficient assets to cover any claim made up to the amount of the uninsured deductible; and
- 2.2.5** the person must not have elected, in a manner determined by The Law Society, not to be included in the scheme.

2.3 LIMITATION OF LIABILITY

A person to whom the scheme applies and against whom a cause of action relating to occupational liability is brought is not liable in damages above the limitation amount if the person has an insurance policy or policies –

- 2.3.1** insuring the person against occupational liability; and
- 2.3.2** under which the amount payable in respect of the occupational liability is not less than the amount of the limitation of liability under the scheme in relation to the person at the time at which the relevant cause of action arose.

2.4 2.4. LEVELS OF LIMITATION

The limitation of liability varies in accordance with the number of principals practising in the relevant firm and is determined as follows:

- 2.4.1** solicitors who practice as sole practitioners or in a firm having no more than three principals have their occupational liability limited in accordance with the PS Act to the amount of professional indemnity cover provided by the master policy approved by the Attorney-General;
- 2.4.2** solicitors who practice in a firm having more than three principals have their occupational liability limited in accordance with the PS Act to an amount determined by multiplying the sum of \$500,000 by the number of principals at the relevant time, but not exceeding a maximum amount of \$ 10,000,000 and not being less than the amount of Professional indemnity cover provided by the master policy approved by the Attorney-General; and
- 2.4.3** solicitors who wish to have a level of limitation of liability greater than the amount determined in accordance with either clause 2.4.1 or 2.4.2 may select a higher amount.

2.4.4 accordingly, the limit of liability determined in accordance with clauses 2.4.1 and 2.4.2 above is as follows.

| Number of Principals | Limitation Amount |
|-----------------------------|--------------------------|
| 1 | \$1,500,000 |
| 2 | \$1,500,000 |
| 3 | \$1,500,000 |
| 4 | \$2,000,000 |
| 5 | \$2,500,000 |
| 6 | \$3,000,000 |
| 7 | \$3,500,000 |
| 8 | \$4,000,000 |
| 9 | \$4,500,000 |
| 10 | \$5,000,000 |
| 11 | \$5,500,000 |
| 12 | \$6,000,000 |
| 13 | \$6,500,000 |
| 14 | \$7,000,000 |
| 15 | \$7,500,000 |
| 16 | \$8,000,000 |
| 17 | \$8,500,000 |
| 18 | \$9,000,000 |
| 19 | \$9,500,000 |
| 20 | \$10,000,000 |
| 20+ | \$10,000,000 |

and shall not be less than the amount of professional indemnity cover provided by the master policy approved by the Attorney-General.

2.5 STANDARDS OF INSURANCE:

The insurance held by members as determined by The Law Society must, unless the Society otherwise agrees, be of the following standard:

2.5.1 Cover for the first \$1,500,000 must be that provided by the approved insurance policy required to be in force from time to time in respect of an insurable solicitor pursuant to section 41(2) of the LP Act. The terms of this policy, are required to be approved by order in writing by the Attorney-General

2.5.2 Cover in excess of that referred to in clause 2.5.1 must:

- 2.5.2.1** have at least one automatic reinstatement each year;
- 2.5.2.2** be provided for all civil liability arising in connection with the solicitor's practice;
- 2.5.2.3** be retrospective for any event giving rise to a claim made during the insured period.
- 2.5.2.4** extend to all professional and non-professional staff employed in connection with the practice and any service entity set up to provide services solely to the practice;
- 2.5.2.5** be a "claims made policy";
- 2.5.2.6** be costs inclusive;
- 2.5.2.7** cover liability in excess of the cover referred to in clause 2.5.1 ie. the first layer should commence where the LawCover cover ends;
- 2.5.2.8** exclude liability in respect of professional services (other than legal services) provided by principals who are not solicitors;
- 2.5.2.9** exclude partner fraud;

2.5.3 Cover in excess of that referred to in clause 2.5.1 must be provided by one of the following:

- 2.5.3.2 an insurer licensed under the Insurance Act 1973 subject to the prudential supervision of the Insurance and Superannuation Commissioner; or
- 2.5.3.3 a foreign insurer - provided the appropriate statutory notices under section 34 of the Insurance (Agents and Brokers) Act 1984 (Cwth) have been given; or
- 2.5.3.4 a statutory scheme approved by the Attorney General; or
- 2.5.3.5 any two or more of the above.

2.6 COMPLAINTS AND DISCIPLINARY MATTERS

The Society conducts a disciplinary and complaints handling statutory scheme required by Part 10 of the LP Act in respect of its members. All members of the occupational association must comply with the Professional Conduct and Practice Rules made pursuant to sections 57B and 57C of the LP Act.